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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 215

NORMAN H. WEAVER,

Petitioner,

vs

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONER NORMAN H. WEAVER.

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THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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With regard to the Argument of the United States in its Brief in Opposition, the petitioner respectfully makes these points in reply.

First, the United States misapprehends, in part, the position of the petitioner. Petitioner's basic argument is that the court of appeals has erred herein as a matter of law in holding that the intent to defraud requisite to sustain convictions under 18 U. S. C., Secs. 657 and 1006 is synonomous with mere acts of maladministration. It is true that secondarily the petitioner also urges that there has been no proof

of intent to defraud; however, the primary tenet of the petitioner before this Court is that under the authority of *United States* v. *Britton,* 107 U. S. 655 (1882); *United States* v. *Britton,* 108 U. S. 193 (1882); and *United States* v. *Britton,* 108 U. S. 199 (1882), even viewing the situation in the light most favorable to the United States, the petitioner has not been charged with nor has he committed a crime.

Second, the petitioner never has urged that actual loss must be shown. He does contend that at least some risk of loss to Midwest Capital Corporation must be shown.

Third, footnote 3 on page 7 of the Brief for the United States in Opposition departs from the issues before this Court to state, in part:

> "Since concurrent sentences were imposed, the court of appeals found it unnecessary to consider the other counts on which petitioner was convicted. However, there is little doubt that petitioner was properly convicted on them as well, and hence that the judgment of the district court is valid irrespective of Counts III and IV."

The petitioner assumes that this attempt to validate his conviction on counts not before this Court constitutes an admission that his conviction cannot be sustained under Counts III and IV of the indictment herein, which are the only counts before this Court.

Fourth, the United States does not question the undeniable fact that at all times there was a valid and collectible obligation belonging to Midwest Capital Corporation, either from the petitioner in the amount of $20,000.00, or from Grand Improvement Company, the petitioner's wholly owned corporation, in the sum of $52,000.00, or from both. Thus, rather than a misapplication or conversion, there was only a substitution of assets, and, therefore, there was no

risk of loss or actual loss suffered by Midwest Capital Corporation. Hence, there was no intent to defraud that corporation on the part of the petitioner.

Fifth, it is difficult to determine the specific wrong which the United States alleges that the petitioner has committed. Unquestionably, everything that the United States alleges against petitioner was done with the full knowledge of all those in control of both corporations, because Midwest Capital Corporation was wholly owned by Lawrence Stickell and Grand Improvement Company by the petitioner. It is true that the minutes of one of the directors' meetings of Midwest Capital Corporation were backdated but there is no allegation that this was done by the petitioner. It is true that the Grand Improvement Company loan agreement, note and pledge agreement were backdated, but their validity is not affected by this. They were and are valid and collectible. Thus, what the books and records of Midwest state to be the case is true. There is and was an enforceable note and pledge agreement from the petitioner's alter ego, Grand Improvement Company, to Midwest Capital Corporation. If backdating documents is to be an offense, then every officer of a bank or savings and loan association, who knowingly permits a deed to be backdated to conform to the date of a mortgage which already has been placed of record, has committed a crime.

With regard to the authorities cited in the Brief of the United States In Opposition, the petitioner respectfully makes these comments.

Hargraves v. *United States*, 75 F. 2d 68 (C. A. 9) (1935) involved a loan from a bank to a bankrupt dummy of one of its officers. Those in charge of the bank were deceived by the form of the transaction, and the unsecured note given by the bankrupt person to whom the money was ostensibly loaned was worthless at the outset. There was

not, as there was in the instant case, an exchange of one valid asset, cash, for another valid asset, a collectible obligation, nor did the other officers and directors have full knowledge of the transaction as they did here.

In *Cravens* v. *United States*, 62 F. 2d 261 (C. A. 8) (1933), as concerns the misapplication counts of the indictment, money was diverted from the institution in two ways, first, by charges to a fictitious Special Bond Investment Account, and, second, by additional charges to straw loan investment accounts pertaining to properties on which the institution already had foreclosed. The joint-stock land bank paid out money and received no consideration in return. As stated previously, in the case at bar money was paid out and collectible obligations were received in return.

In *Agnew* v. *United States*, 165 U. S. 36 (1896) the institution received only worthless bonds in exchange for money paid to one of its officers.

Golden v. *United States*, 318 F. 2d 357 (C. A. 1) (1963), of course, was a case where the conviction was reversed on a point other than the one for which the United States apparently cites the case. However, again the United States misapprehends the petitioner's position. He does not contend that actual loss must be shown. He does urge that risk of loss must be shown.

Robinson v. *United States*, 30 F. 2d 25 (C. A. 6) (1929) concerned fictitious transactions amounting to additional loans to a known insolvent customer of the bank by an officer of the bank without the knowledge of his superiors and is cited by the United States for the proposition that a showing of actual loss is not necessary. This is not the fact situation in the instant case, and again the petitioner herein contends not that actual loss must be shown, but that at least some risk of loss must be shown.

CONCLUSION.

On the facts and on the authorities herein the petition for a writ of certiorari should be granted.

Respectfully submitted,

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